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State v. Benedict Appellant's Reply Brief Dckt. 43952

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 43952
)	
v.)	ADA COUNTY NO. CR 2014-8846
)	
TAYLOR CARL BENEDICT,)	APPELLANT'S
)	REPLY BRIEF
Defendant-Appellant.)	
)	

STATEMENT OF THE CASE

Nature of the Case

Taylor Benedict appeals, contending the district court abused its discretion when it refused to reduce his sentence pursuant to his oral motion at a probation disposition proceeding for leniency under I.C.R. 35 (*hereinafter*, Rule 35). The State's arguments in response fail to appreciate the nature of Mr. Benedict's motion and his argument on appeal. As a result, its arguments run contrary to Idaho Supreme Court and Court of Appeals precedent, as well as the district court's findings of fact. Therefore, the State's arguments are unfounded and should be rejected. Accordingly, this Court should reduce Mr. Benedict's sentence as it deems appropriate, or, alternatively, remand this case to the district court for a new disposition determination.

Statement of the Facts and Course of Proceedings

The statement of facts and course of proceedings were previously articulated in Mr. Benedict's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

Whether the district court abused its discretion by refusing to reduce Mr. Benedict's sentence when it revoked his probation and executed his underlying sentence.

ARGUMENT

The District Court Abused Its Discretion By Refusing To Reduce Mr. Benedict's Sentence When It Revoked His Probation And Executed His Underlying Sentence

A. The Information About Mr. Benedict's Performance On Probation Constitutes New Information Supporting His Oral Rule 35 Motion At The Probation Revocation Hearing

The State's assertion that Mr. Benedict did not support his oral Rule 35 motion with new or additional evidence (see Resp. Br., p.3) represents a fundamental misunderstanding of Mr. Benedict's motion, the relevant Idaho Supreme Court precedent, and the district court's conclusion of facts as to Mr. Benedict's performance on probation. Mr. Benedict made his Rule 35 motion as part of his recommendations for disposition on the probation violations he had admitted. (See Tr., p.10, L.22 - p.12, L.5.) "Upon revocation of that probation, the court . . . could either impose the sentence that had previously been suspended or reduce that sentence pursuant to Rule 35 of the Idaho Criminal Rules." See *State v. Timbana*, 145 Idaho 779, 782 (2008). The decision of whether to reduce a sentence when revoking probation must necessarily turn on the information available to the district court at the disposition hearing, *i.e.*, the defendant's

performance on probation. Furthermore, since defendants cannot argue the district court should have exercised that authority for the first time on appeal, *State v. Clontz*, 156 Idaho 787, 792 (Ct. App. 2014), defendant's need to ask the district court to exercise that authority at the disposition hearing.

Mr. Benedict did precisely that. Specifically, defense counsel argued, "he did start out very well. I know that he was working, and he was going to meetings at the Grapevine. And it also seemed to be going very well." (Tr., p.11, Ls.15-18.) However, his performance deteriorated, as defense counsel explained, "I'm simply speculating here, but my suspicion is that he ran into some old cohorts, an old crowd that he probably knew better than to be around and got himself in trouble. Again, I think he's coming before this court fully acknowledging that." (Tr., p.11, Ls.19-24.) "As a result, Your Honor, I would ask this court to consider a Rule 35 . . . to give him some relief on the fixed time." (Tr., p.11, L.15 - p.12, L.5.) Thus, the new information, which the district court did not have when it imposed the sentence, was Mr. Benedict's initial performance on probation. The State's argument that there was no new evidence runs directly counter to the rule the Supreme Court articulated in *Timbana*, and so, should be rejected.

Furthermore, the State's contention that Mr. Benedict's performance on probation does not constitute new information ignores the district court's factual findings about Mr. Benedict's performance on probation. (Resp. Br., p.3.) Evidence about the defendant's rehabilitative progress has been held to constitute new information which the district court can consider in regard to a Rule 35 motion. See, e.g., *State v. Simmons*, 116 Idaho 69, 76 (Ct. App. 1989). This is because "[i]t would ill serve the

purpose of a Rule 35 motion to preclude the defendant from presenting fresh information about himself or his circumstances.” *State v. Torres*, 107 Idaho 895, 898 (Ct. App. 1984).

The district court found, as a matter of fact, that Mr. Benedict entered probation with several issues to address, but found “one by one, you have been putting those [issues] aside.” (Tr., p.14, Ls.18-22.) The district court concluded this constituted positive performance on probation, as it told Mr. Benedict, “I’m really proud of how well you did. I really am.” (Tr., p.14, Ls.16-17.) Regardless of whether the State views Mr. Benedict’s performance on probation in the same way as the district court (see Resp. Br., pp.3-5), the district court’s conclusions of fact are entitled deference unless they are shown to be clearly erroneous. See, e.g., *State v. Neal*, 159 Idaho 439, 443 (2015). The State has not argued those findings are clearly erroneous. (See generally Resp. Br.) It could not have done so either. There is substantial and competent evidence supporting the district court’s finding. (R., pp.144-47 (minutes from several status conferences during which Mr. Benedict’s progress with his treatment and job search were discussed).) As such, there is new information about Mr. Benedict’s progress on probation which supports his Rule 35 motion.

B. The State’s Argument On The Merits Of Mr. Benedict’s Motion Runs Contrary To Idaho Supreme Court Precedent

The State acknowledges, as Mr. Benedict did, that the district court did not articulate its reasons for revoking Mr. Benedict’s probation or implicitly denying his Rule 35 motion. (Resp. Br., p.4; App. Br., p.5 n.3.) In such cases, the Idaho Supreme Court has held, “although the trial court failed to make specific statements regarding its

reasons for imposing the sentence, a review of the record adequately reflects his reasoning.” *State v. Newman*, 124 Idaho 415, 418 (1993) (quoting *State v. Osborn*, 104 Idaho 809, 810 (1983)). Despite the Idaho Supreme Court’s determination that such cases require drawing reasonable inferences from the record, the State believes it is possible for application of that rule to be black and white, that an interpretation of the district court’s actions can be “patently false.” (Resp. Br., p.3.) The State is mistaken. The rule adopted in *Newman* and *Osborn* necessarily includes some gray area, as the parties and court on appeal are asked to attempt to divine the district court’s unspoken rationale from its statements and decisions. In such cases, there is no black-and-white answer.

Furthermore, if the record could unequivocally reveal the district court’s rationale, as the State believes, the appellate courts would not have to continue to reiterate the point that, though it is not required, it is “welcomed and encouraged” for sentencing courts to articulate the reasons for their sentencing decisions. *State v. King*, 120 Idaho 955, 958 (Ct. App. 1991); see, e.g., *State v. Follinus*, 124 Idaho 26, 30 (1993) (same); *State v. Brewer*, 106 Idaho 145, 146 (1984) (same); *Osborn*, 104 Idaho at 810 (same); *State v. Smith*, 127 Idaho 632, 633 (Ct. App. 1995) (same); see also *State v. Moreno*, 2015 WL 1237301, *1 (Ct. App. 2015) (unpublished) (same).¹ Therefore, the State’s over-simplistic evaluation of the merits of Mr. Benedict’s Rule 35 motion should be rejected.

¹ *Moreno* is simply cited as a historical example of the courts’ continued reference to this principle, not for any precedent binding on this court. See *Staff of Idaho Real Estate Comm’n v. Nordling*, 135 Idaho 630, 634 (2001) (explaining “consideration of the unpublished opinion, not as binding precedent but as an example, was appropriate”); accord. *Bourgeois v. Murphy*, 119 Idaho 611, 617 (1991) (same).

At any rate, the inferences Mr. Benedict drew from the district court's statements and actions are not unreasonable. He specifically asked for a reduction of the fixed term of his sentence based on the strides he made before violating his probation. (Tr., p.11, L.15 - p.12, L.5.) The association between the term of the fixed sentence and parole eligibility is obvious from statute: "During a minimum term of confinement, the offender shall not be eligible for parole or discharge. . . ." I.C. § 19-2513. The district court acknowledged the strides Mr. Benedict made on probation. (Tr., p.14, Ls.14-22; see R., pp.144-47.) However, it decided to revoke his probation in response to his admission to violating the terms of that probation. (Tr., p.13, L.23 - p.14, L.3.) It stated, "I'm going to impose the seven-year sentence, consisting of three years fixed, followed by four years indeterminate. You have credit for quite a bit of time served, well over a year and a half." (Tr., p.14, Ls.3-8.) From those statements, Mr. Benedict reasonably inferred the unspoken reason the district court executed his sentence with three years fixed (*i.e.*, without reducing the fixed term of his sentence) despite his initial positive performance on probation was because he had "well over a year and a half" of credit accrued. (App. Br., pp.4-7.)

Mr. Benedict does not, however, contend this is the only reasonable way to interpret the district court's unspoken decision to deny his Rule 35 motion because, as noted *supra*, there is gray area in this regard. The State, for example, contends that the district court's decision might be understood as a product of evaluating Mr. Benedict's potential risk to the community. (See Resp. Br., p.4.) Although that might be a reasonable inference, Mr. Benedict contends his is the more reasonable inference because, unlike his inference, the State's inference does not account for the district

court's recognition of the positive aspects of Mr. Benedict's performance on probation.
(See *generally* Resp. Br.)

The district court expressly acknowledged that Mr. Benedict had been reducing his risk to the community by addressing aspects of his character and situation which had previously increased his risk to recidivate: "[Y]our risk to recidivate, your numbers are so high that the deck has been stacked against you. And one by one, you have been putting those cards aside." (Tr., p.14, Ls.18-21.) That conclusion by the district court runs directly counter to the heart of the State's inference – that the decision was reasonable because Mr. Benedict posed an unacceptable risk to society. Therefore, the State's inference is much less reasonable than Mr. Benedict's.

As such, this Court should adopt Mr. Benedict's more-reasonable inference about the district court's decision in regard to his Rule 35 motion. In that regard, Mr. Benedict continues to assert the district court abused its discretion when it refused to reduce his sentence when it revoked his probation and executed his underlying sentence for the reasons detailed on pages 4-7 of his Appellant's Brief.

CONCLUSION

Mr. Benedict respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 15th day of July, 2016.

_____/s/
BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 15th day of July, 2016, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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DISTRICT COURT JUDGE
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_____/s/_____
EVAN A. SMITH
Administrative Assistant

BRD/eas